concluding that, by insisting that the deposit arrangement be carried out, the purchaser induced the vendor to believe that the purchaser had relinquished any claim to specific performance. Moreover, Mr. Godfrey accepted before their Lordships that it was too late to contend that the arrangement amounted to an agreement to forego specific performance.

All this might not matter if there were an overriding rule of law that in no circumstances can a purchaser who has been awarded damages at first instance require, as a term of some arrangement, that the damages be deposited with a stakeholder, or paid into court, without *ipso facto* electing against specific performance. With the greatest respect to those who may favour such a rule, I cannot help thinking that it would go too far.

In the present case, after the initial judgment the vendor applied for a stay, which was refused by the High Court. Next the vendor filed a notice of motion in the Court of Appeal for a stay. The correspondence (letters of 23rd, 28th, 30th October and 4th, 12th and 16th November 1981) shows that a bargain was then reached that, if the damages were paid to a stakeholder, execution of the judgment would be stayed pending the outcome of the vendor's appeal. By previously opposing a stay, except on such terms, the purchaser did not commit itself to executing the judgment. Evidently the purchaser in fact took no step towards execution, nor does there even appear to be evidence of a clear threat of execution. What the vendor gained by the bargain was that the purchaser no longer had the *option* of taking any steps to enforce the judgment (as by winding-up proceedings).

I agree that the principles are correctly stated in the chapter on Election in *Spencer Bower and Turner* on "Estoppel by Representation", 3rd edition, a chapter which may be said to be of special authority, having been substantially rewritten by Sir Alexander Turner. But a theme of the chapter is that election must be unequivocal, the alternative courses of action in truth mutually exclusive. Looking at the known facts of the present case in the light of those tests, I think that to be satisfied that the doctrine applies one should require, like Hamlet, "grounds more relative than this".

Appeal allowed.

Solicitors: *Coward Chance; Freshfields.*

SUN KEE & CO v. CHOP SIN HUA & ANOR.

[P.C. (Lord Diplock, Lord Edmund-Davies, Lord Bridge of Harwich, Lord Brightman, Lord Templeman) October 31, 1984]

[Privy Council Appeal No. 45 of 1982]

Practice and Procedure – Execution of judgment – Order for sale by public auction – Application to set aside sale – R.S.C. 1957, 0.43 r. 11

This was an appeal from the decision of the Federal Court reported at [1981] 2 M.L.J. 327. It concerned the sale of immovable property in Kuala Lumpur pursuant to an order of sale made under Order 43 of the Rules of the Supreme Court to satisfy a judgment debt owed by the appellant to the first respondent. The only question in the appeal was whether the sale was liable to be set aside under rule 11(e) of that order on the ground of a material irregularity in publishing it. The High Court judge was of the opinion that there was no material irregularity and the appeal to the Federal Court was dismissed. The appellants appealed.

Held, dismissing the appeal: their Lordships adopt the reasoning of the Federal Court which carries such conviction that there is no need to repeat it.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Donald Rattree Q.C. (G. Krishnan with him) for the appellants.

Eugene Cotran (B.G. Ee with him) for the 1st respondent.

Lord Diplock (delivering oral judgment of the Board): This appeal concerns a sale of immoveable property in the district of Kuala Lumpur pursuant to an order for sale made under order 43 of the Rules of the Supreme Court to satisfy a judgment debt owed by the appellant to the first respondent. The only question in the appeal is whether the sale is liable to be set aside under rule 11 (e) of that order on the ground of a material irregularity in publishing or conducting it.

The High Court judge, even although the hearing before him was mistakenly conducted on the assumption that section 257 of the National Land Code applied to the sale instead of sections 334 to 339, was of the opinion that there was no material irregularity. The Federal Court, before whom the appeal was conducted on the correct legal basis, were unanimously of the same opinion.

Their Lordships adopt the reasoning of the Federal Court, which carries such conviction that

there is no need to repeat it.

Their Lordships will advise His Majesty the Yang di-Pertuan Agong that this appeal ought to be dismissed and that the appellant ought to pay the first respondent's costs.

Appeal dismissed.

Solicitors: *Stephenson Harwood; Philip Conway Thomas & Co.*

LIM YOKE FOO v. EU FINANCE BERHAD

[P.C. (Lord Diplock, Lord Edmund-Davies, Lord Bridge of Harwich, Lord Brightman and Lord Templeman) October 29 & November 21, 1984]

[Privy Council Appeal No. 18 of 1983]

Land Law – Order of sale made by Collector of Land Revenue – Error in order – Power of Collector to correct error or to postpone sale – No power to cancel order and issue a fresh order for sale – Second order a nullity – National Land Code, ss. 260-266.

In this case the appellant had charged certain lands as security for a loan in favour of the respondents. The respondents took steps to enforce the charge in default of payment and in 1976 the Collector of Land Revenue after enquiry made an order for the sale of the lands by public auction specifying the amount due to the respondents at the date of the order was $443,694.52 and fixing the reserve price at $507,000. By an error only 12 instead of 20 titles were set out in the Schedule. The appellant filed a notice of appeal against the order and the Collector then purported to cancel the sale. The appeal was later withdrawn and the respondents requested the Collector of Land Revenue to proceed with the sale. The then Collector of Land Revenue purported to make and issue another order of sale in 1979, specifying the amount due to the appellant as the same as that stated in the first order but fixed the reserve price at a higher figure of $562,000, and scheduling all the 20 titles. This second order purported to find that the amount due to the respondents was precisely the same sum as had been found due in June 1976, with nothing added for intermediate interest. The appellant sought to take advantage of this obvious mistake and paid the sum stated. The Collector then purported to cancel the sale. The appellant brought an action claiming that the charge had been redeemed and demanding the title deeds.

The respondents counterclaimed for a declaration that the 1976 order for sale was still subsisting and sought judgment for the full amount of principal and interest. The learned Judge of the High Court found in favour of the appellant and ordered the respondents to execute a memorandum of discharge. On appeal to the Federal Court, the Federal Court held that the Collector had no power to cancel the 1976 order of sale and that the said order on which the appellant relied was a nullity and devoid of any effect. The Federal Court set aside the judgment of the trial judge and held that the respondent was entitled to payment of his claim with accrued interest ([1982] 2 M.L.J. 37). The appellant appealed.

Held: (1) the Federal Court was right in holding that the Collector had no power to cancel an order for sale made under section 263(1) of the National Land Code. Therefore the 1976 order remained on foot and the 1979 order was no order at all and was a nullity and devoid of any effect;

(2) an essential prerequisite of an order of sale under section 263 of the National Land Code was that there should be an application by the chargee for such an order. Another essential is that the Collector should hold an enquiry pursuant to section 261. In this case the 1979 order was not preceded by an application by the chargee nor was there an enquiry held. The Collector therefore had no right as between the lender and the borrower to make the 1979 order and the order was hopelessly bad.

Case referred to:

(1) *Subramaniam* v. *Muthiah Chetty* [1934] M.L.J. 222.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

D. Widdicombe Q.C. (M.A. Krishnan with him) for the appellant.

D.K. Rattee Q.C. (Zainudin Ismail with him) for the respondents.

Cur. Adv. Vult.

Lord Brightman (delivering the judgment of the Board): This appeal from a decision of the Federal Court of Malaysia arises in the context of an application by a chargee of land for an order for sale under the National Land Code. Such an order takes a statutory form, which includes a finding of the sum of money due to the chargee. As a result of an administrative mistake the order for sale in the present case was followed by a second order for sale which purported to record a finding of a smaller amount of indebtedness than the first order. The defaulting debtor seeks to redeem on payment only of the smaller sum due under the second order. His claim succeeded at first instance, but was rejected by the Federal Court.

In September 1974 Lim Yoke Foo, trading as the Syarikat Puchong Industrial and Development Company, to whom their Lordships will refer as "the borrower", applied to Eu Finance Berhad ("the lender") for a three month loan of